



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/711,346

09/13/2004

George Manak

76385.0015

5345

29052

7590

11/10/2009

SUTHERLAND ASBILL & BRENNAN LLP
999 PEACHTREE STREET, N.E.
ATLANTA, GA 30309

EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

11/10/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/711,346 | Applicant(s) MANAK ET AL. | |
| | Examiner Lien T. Tran | Art Unit 1794 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-26 and 28-32 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-17, 19-23, 26 and 28-32 is/are rejected.
- 7) ☒ Claim(s) 18, 24 and 25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim 28 is rejected under 35 U.S.C. 102(b) as being anticipated by Huber et al.

Huber et al disclose system for producing foods. The system comprises an extruder comprising a cutter, means for drying, means for tempering and means for cutting. The extruder in Huber et al comprises a cutter. Paragraph 38 of the specification discloses the cutter 480 is attached adjacent to the die of the extruder 460. The cutter in the Huber extruding system is attached adjacent to the die connected to the extruder. Huber et al disclose an extruder in which a rotating knife assembly is position adjacent the outlet of the die for cutting the extrudate into a convenient size. Figure 1 shows a die assembly (20) attached to the extruder containing the cutter (54). Huber et al disclose a dehydration assembly 14 which is means for drying (see col. 4 line 55). The claim does not distinguish between means for drying the loaves and means for drying the crumb; thus, it can be the same means and the function does not determine the patentability of the apparatus. The dehydration assembly includes agitator 56 which contains a pair of blades to provide sharp cutting edge (see col. 4 lines 64-67); this is a means for cutting. The dehydration assembly further includes cyclone 68 (see col. 5 lines 24-25) which is a means for tempering because the specification discloses the temperer is a cyclone.

Claims 15-17, 19-23,26,28-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens et al in view of Cross and Huber et al.

Stevens et al disclose a system comprising an extruder for extruding a mixture, a segmenter for cutting the extrudate, a drier for drying the segments, a mill for milling to provide granules, a sieve for screening and sorting the granules. The system also can

Art Unit: 1794

include a mixer to make an extrudable mixture. The segmenting is achieved by using a cutting means which can be a wire or knife. The dryer can be a fluid bed dryer and the extruder can be heated. (see columns 4-5)

The segmenter and mill in the Stevens et al system are equivalent to the coarse cutting and fine cutting. The sieve is equivalent to the claimed sizing device.

Stevens et al do not disclose an extruder comprising a cutter, a second dryer, a tempering chamber, plurality of pneumatic conveying lines and bypassing lines.

Cross discloses a system for making snack product. The system comprises a pre-conditioner, and extruder, a first dryer, a first cyclone separator, a second cyclone separator, a conveyor assembly and a spraying mechanism. The system contains a cutter for cutting a cooked extrudate as it emerges from the extruder; the cutter is connected to the extruder. When the use of a second drying apparatus is not feasible, the product can be returned to the first drying apparatus for further drying. The system comprises two cyclone separators, any apparatus capable of pneumatically transferring and thus agitating the material can be used. The pieces are pneumatically transferred.

Huber et al disclose an apparatus for extrusion and dehydration. They disclose an extruder in which a rotating knife assembly is position adjacent the outlet of the die for cutting the extrudate into a convenient size. Figure 1 shows a die assembly (20) attached to the extruder containing the cutter (54) (see example 1)

It would have been obvious to one skilled in the art to use an extruder having a cutter as taught by Cross and Huber et al. to cut the extrudate into convenient size at it emerges the extrudate to make processing more efficient when using the Stevens et al

Art Unit: 1794

system because the extrudate will have shorter length before entering further processing. The extruder disclosed in Cross and Huber et al comprises a cutter. Paragraph 38 of the specification discloses the cutter 480 is attached adjacent to the die of the extruder 460. Both the cutters in Cross and Huber extruding systems are attached adjacent to the die connected to the extruder. It would have been obvious to one skilled in the art to include a second dryer as taught by Cross in the Stevens et al system when it is desired to further dry the granular product. Adding additional dryer depends on the type of end product made and the moisture content wanted for that product. It would also have been obvious to include a cyclone separator as taught by Cross to enable the separation of unwanted material ; one would have been motivated to add the separator to obtain a purer end product. The placement of the particular device in the system depends on what is deemed convenient and the type of product made. This placement can readily be determined by one skilled in the art without undue experimentation. It would have been obvious to by-pass the second cutter or grinder depending on the ultimate size of the end product desired. It would have been obvious to use pneumatical transfer as taught by Cross to facilitate the transferring process.

Claims 18,24 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant's argument is persuasive with respect to the inclusion of a grinder. There is no disclosure or suggestion to add a grinder to the Stevens' system.

In the response filed 8/14/09, applicant argues Huber fails to show the first means for drying the product loads, the means for cutting separate from the extruder and the means for drying the product crumbs. This argument is not persuasive. Huber discloses a dehydration assembly to dry the extrudate. The dehydration assembly contains an agitator 56 that is equipped with blade-arms; this is a means for cutting separate from the extruder. The drying assembly is divided into regions. For instance, in the agitator, the extrudate is dried by hot air having a temperature of from about 300-550 degree C. The extrudate is then moved into tower 66; in tower 66, the process air is from about 90-180 degree. This is hot air which causes further drying. Thus, this constitutes further drying and the apparatus have multiple means for drying. The claim does not define the means for drying or how the system is connected. As long as the prior art discloses the means for drying, means for cutting, the claimed limitations are met. The functions of drying product loaves and drying product crumbs are the intended uses of the apparatus which do not determine the patentability of the apparatus.

With respect to the 103 rejection, applicant argues the mill of Stevens cannot be considered a cutter or a cutting device and the segmenter cannot be considered a comminuting device. This argument is not persuasive. Stevens discloses a segmenter which divides the noodles into segments. Stevens discloses on column 4 lines 63-67 the segmenting is achieved by using a cutting means which could be a wire or a knife. Thus, the segmenter is equivalent to the claimed comminuting device that comprises a cutter. The wire or a knife is the cutter. Stevens discloses milling the segments to

Art Unit: 1794

smaller particles. Thus, the mill functions to further cut the segments; thus, it is not seen how this cannot be considered as a cutter. With respect to claim 17, the segmenter and the mill in the Stevens' system constitute the comminuting device with a first cutter and second cutter. With respect to claims 19 and 26, the limitations are addressed in the rejection. Claim 26 recites that the extruder is heated; there is nothing about a grinder. With respect to claim 29, the claim does not set forth specific series of cutters. The mill in Stevens is the means for grinding. With respect to claim 28, the segmenter is the means for cutting that is separate from the extruder. The rejection is a combination of reference which show a means for tempering. Stevens discloses a dryer which is a means for drying. With respect to claim 32, the rejection is based on a combination of references. Huber and Cross both teach an extruder with a cutter. Stevens teaches a segmenter which is a cutting station that is separate from the extruder.

Applicant's arguments filed 8/14/09 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

Art Unit: 1794

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

November 7, 2009

/Lien T Tran/

Primary Examiner, Art Unit 1794